

EXHIBIT M



Quinault Indian Nation

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Delegation Agreement

Final Draft

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Agreement for Partial Delegation of the Federal Implementation Plan for the Quinault Indian Reservation by the United States Environmental Protection Agency, Region 10 to the Quinault Indian Nation

This agreement between the Quinault Indian Nation (QIN) and the U.S. Environmental Protection Agency (EPA), Region 10, sets forth the legal and procedural basis for partial delegation of administrative authority for implementation of certain sections of the Federal Implementation Plan (FIP) for the Quinault Indian Reservation (Reservation) (40 CFR Part 49 Subpart M, Sections 49.10581-49.10640), hereafter referred to as the FIP.

I. Purpose

The purpose of this Delegation Agreement is to delegate certain administrative responsibilities and authorities of the FIP to the QIN. The FIP establishes Federal regulations and requirements applicable to all sources of air pollution located within the federally-recognized exterior boundary of the Reservation. Upon the effective date of this Delegation Agreement, EPA Region 10 delegates to the QIN authority to administer portions of the FIP on all lands within the Reservation.

II. Legal Authority

- A. The Clean Air Act Amendments of 1990 (CAA, or Act) provide EPA authority to promulgate regulations to protect air quality within Indian country. See Section 301(a) and 301(d)(4) of the Act. EPA Region 10 has promulgated such regulations for the Reservation. See 40 CFR Part 49 Subpart C and 40 CFR Part 49 Subpart M.
- B. Pursuant to 40 CFR 49.122, EPA may delegate to an Indian Tribe partial administrative authority. Tribes receiving delegation do not have the authority to further delegate this authority.
- C. 40 CFR Part 49 Subpart M, "Implementation Plans for Tribes - Region X", identifies for each Indian Reservation specific regulations applicable to each Reservation. 40 CFR Part 49 Subpart M, contain the FIP for the Reservation.
- D. The QIN has authority to conduct activities in support of this delegation. This Delegation Agreement neither creates nor diminishes any authority otherwise established by tribal or federal law.
- E. EPA retains full authority and responsibility for implementation, administration, and enforcement of any and all components of the FIP.
- F. The QIN retains its inherent sovereignty over Indians and non-Indians within the boundaries of the Quinault Indian Reservation as reserved in the Treaty with the Quinault of 1855 and as otherwise provided by law.

III. FIP

The following are the federal regulations from 40 CFR 49 that apply to all sources of air pollution within the Reservation, which constitute the FIP:

Section 49.123, General Provisions

The General Provisions of the FIP contain definition of terms, requirements for testing, requirements for monitoring, recordkeeping, and reporting, discussion of credible evidence, and provisions incorporated by reference (e.g. ASTM test methods).

Section 49.124, Rule for limiting visible emissions

This section limits visible emissions of air pollutants from certain air pollution sources operating within the Reservation to control emissions of particulate matter to the atmosphere and to indicate whether a source is continuously maintained and properly operated.

Section 49.125, Rule for limiting the emissions of particulate matter

This section limits the amount of particulate matter that may be emitted from certain air pollution sources operating within the Reservation to control ground level concentrations of particulate matter.

Section 49.126, Rule for limiting fugitive particulate matter emissions

This section limits the amount of fugitive particulate matter that may be emitted from certain air pollution sources operating within the Reservation to control ground level concentrations of particulate matter.

Section 49.129, Rule for limiting emissions of sulfur dioxides

This section limits the amount of sulfur dioxide that may be emitted from certain air pollution sources operating within the Reservation to control ground level concentrations of sulfur dioxide.

Section 49.130, Rule for limiting sulfur in fuels

This section limits the amount of sulfur contained in fuels that are burned at stationary sources within the Reservation to control emissions of sulfur dioxide to the atmosphere and ground level sulfur dioxide concentrations.

Section 49.131, General rule for open burning

This section limits the types of materials that can be openly burned within the Reservation to control emissions of particulate matter and other noxious fumes to the atmosphere and ground level concentrations of particulate matter. This rule also provides the authority to issue a burn ban should conditions warrant.

Section 49.135, Rule for emissions detrimental to public health or welfare

This section is intended to prevent the emissions of air pollutants from any air pollution source operating within the Reservation from being detrimental to public health or welfare.

Section 49.137, Rule for air pollution episodes

This section establishes procedures for addressing the excessive build-up within the Reservation of certain air pollutants during periods of stagnant air. This rule is intended to

prevent the occurrence of an air pollution emergency within the Reservation due to the effects of air pollution on human health.

Section 49.138, Rule for the registration of air pollution sources and the reporting of emissions

This section requires certain air pollution sources operating within the Reservation to register with EPA and submit annual emissions reports. Registration allows EPA to develop and maintain a current and accurate record of air pollution sources and their emissions within the Reservation.

Section 49.139, Rule for non-Title V operating permits.

This section establishes a permit program to provide for the establishment of Federally-enforceable requirements for air pollution sources within the Reservation.

IV. Delegated Provisions of the FIP

Partial authority to administer the FIP may be delegated to the QIN for all sources of air pollution located within the Reservation, that are subject to the FIP, (40 CFR 49). This section of the Delegation Agreement identifies those provisions where the QIN will assist EPA with implementing delegated provisions. In addition, this Delegation Agreement identifies program elements that require coordination and communication between EPA and the QIN.

A. Section 49.123, General Provisions

The QIN is delegated authority for the General Provisions of the FIP which contains definition of terms, recordkeeping and reporting requirements, a discussion of credible evidence, and provisions incorporated by reference (e.g. ASTM test methods).

B. Section 49.124 Rule for limiting visible emissions

The QIN is delegated authority to administer the general rule for visible emissions, including the authority to determine whether a source has demonstrated that the presence of uncombined water, such as steam, is the only reason for the failure of an air pollution source to meet 20% opacity. See 40 CFR 49.124(d)(2). This determination should be made by an individual certified to make opacity determinations (certified smoke reader).

C. Section 49.131 General rule for open burning

The QIN is delegated authority to administer the general rule for open burning, including the authority to declare a burn ban under 40 CFR 49.131(d)(2), which provides for issuing a burn ban when conditions warrant, such as when air quality levels have exceeded or are expected to exceed 75% of any National Ambient Air Quality Standard for particulate matter and these levels are projected to continue, or recur, over at least the next 24 hours.

The QIN is delegated authority to coordinate burn bans, to the extent practicable, with surrounding jurisdictions.

The QIN is delegated authority to permit, except during a burn ban under paragraphs (d)(2) or (d)(3) of Section 49.131, open outdoor fires used by qualified personnel to train fire fighters. See 40 CFR 49.131(c)(4).

The QIN is delegated authority to permit, except during a burn ban under paragraphs (d)(2) or (d)(3) of Section 49.131, one outdoor fire each year to dispose of fireworks and associated packaging materials. See 40 CFR 49.131(c)(5).

D. Section 49.137 Rule for air pollution episodes

The QIN is delegated authority to administer the rule for air pollution episodes including the authority to issue an air stagnation advisory or declare an air pollution alert, air pollution warning, or air pollution emergency pursuant to Section 49.137, Rule for air pollution episodes.

The QIN is delegated authority to coordinate, to the extent practicable, the issuance of an air stagnation advisory or declare an air pollution alert, air pollution warning, or air pollution emergency with surrounding jurisdictions.

E. QIN request for additional provisions of FIP

The QIN reserves the right to request amendment of this Delegation Agreement to add delegated authority for additional rules.

V. Complaint Response

A. The QIN is delegated authority to initially respond to air quality complaints about episodes originating on the Reservation as resources allow. This initial response will generally include a site visit to the source, request for additional information, and compliance assistance to the source owner, including information and education about the requirements to comply with the FIP. Information gathered during a site visit response will be transmitted to EPA in writing. EPA will staff the FARR HOTLINE (located in EPA's Seattle office) to log complaints and will immediately report complaints about episodes originating on the Reservation to the QIN, Air Quality Office.

B. EPA, in consultation with the QIN as provided in Section VII of this Delegation Agreement, will decide whether additional response is warranted and the nature and extent of that response. Complaints that result in a violation of the FIP, and that warrant an enforcement response, will be addressed by EPA in accordance with established federal policies and procedures, following consultation with the QIN.

C. The QIN will maintain a log containing details on each complaint it receives related to the FIP. The QIN will submit a summary of complaints and its responses to the complaints to EPA on a quarterly basis for entry into EPA's data management system(s).

VI. Inspections & Investigations

A. The QIN may assist EPA in compliance monitoring activities by investigating complaints and conducting compliance inspections as resources allow, according to guidelines provided to

QIN by EPA. For example, the QIN may conduct compliance inspections of sources, registered sources, general open, and forest open burning sources in accord with an annual inspection work plan that will be jointly developed between QIN and EPA as part of Inspector Credential issuance to a QIN employee by EPA. These activities may include an inspection or investigation of open burning activities regulated under the General rule for open burning, 40 CFR 49.131. These activities may also include determining source opacity levels or other fact finding with respect to applicable FIP requirements for which the QIN's staff have established capability.

B. EPA may issue Inspector Credentials to qualified employees of the QIN once EPA requirements have been met. The requirements for obtaining and tracking EPA inspector credentials are described in the "Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA", September 30, 2004. The conditions and limitations set forth in this Guidance will be incorporated into a separate written Authorization Agreement between the QIN and EPA. A separate annual inspection workplan will be developed jointly between the QIN and EPA, contingent upon issuing Inspector Credentials to a QIN employee.

C. EPA will provide the necessary training as resources allow, or information on where to obtain training for QIN inspectors to qualify for EPA-authorized inspector credentials, including EPA's basic inspector training, health and safety training, air program specific training, and training on the terms/conditions in the Authorization Agreement that impact the inspector.

D. The QIN may also assign staff, identified in the annual inspection workplan, who are authorized representatives of EPA or the QIN to conduct inspections and investigations to evaluate compliance with the FIP.

VII. Enforcement

A. Enforcement of the FIP will remain the sole responsibility of EPA Region 10.

B. EPA, to the extent practicable, will consult with the QIN prior to initiating any enforcement action for sources located within the Reservation.

C. EPA Region 10 will follow all established Federal policies and procedures, including policies and procedures issued by the Office of Enforcement and Compliance Assurance (OECA) and EPA Region 10, in the pursuit of enforcement remedies for violations of the FIP.

D. EPA will, on a semi-annual basis, provide the QIN a report on the status of all air enforcement actions for sources located within the Reservation.

VIII. Data and Reporting Requirements

- A. Data and information obtained by the QIN relating to implementation of delegated portions of the FIP shall be reported to EPA in summary format, on a quarterly basis.
- B. EPA shall furnish the QIN requested information in its files related to implementation of the FIP.
- C. Employees of the QIN should not accept any information submitted to the QIN under a claim as "confidential business information" as defined in 40 CFR Part 2. The QIN will return such information and instruct the person making such a claim to submit the protected information directly to EPA. Information without a claim of "confidential business information" may be made available to the public without further notice.

IX. Funding

- A. EPA expects to provide funds to the QIN to carry out its responsibilities delegated under this Delegation Agreement, as resources allow. This funding will be provided through a Direct Implementation Tribal Cooperative Agreement (DITCA), Clean Air Act Section 105 Grant or other appropriate funding mechanism.
- B. The QIN may promulgate tribal regulations authorizing the collection of fees.

X. Additional Provisions

- A. The QIN has, or will have, the technical capability and adequate resources to carry out responsibilities delegated through this Delegation Agreement. As requested by the QIN, EPA will strive to provide technical assistance and resources to meet needs identified by the QIN or EPA. See IX above.
- B. The QIN will make every reasonable attempt to resolve issues arising between a regulated entity and the QIN from the QIN's decisions or actions relating to their delegated authority under this agreement, before raising the issue to EPA.
- C. EPA Region 10 and the QIN will maintain open communication. Should an issue arise between EPA and the QIN, best efforts should be made for resolution at the staff level. If staff are unable to resolve the issue, staff will present the issue in writing to progressively higher levels of management until consensus is reached. If consensus cannot be reached, EPA retains final implementation and enforcement authority for the FIP.
- D. The QIN will follow all EPA-issued policies, guidance and determinations involving implementation of the FIP and this Delegation Agreement, as provided by EPA. EPA will provide the QIN with copies of these policies, guidance, and determinations. Where no current

EPA policy or guidance clearly covers a specific situation, the QIN and EPA Region 10 shall consult with each other.

XI. Agreement Evaluation, Modification, or Termination

A. EPA and the QIN will engage in an annual evaluation of this Delegation Agreement through government-to-government consultation. This evaluation may include among other things, nature and level of coordination, identification of level of effort, description of program activities, costs, evaluation of response to citizens' complaints, and identification of areas for improvement.

B. This Agreement may be modified to account for any changes to the FIP promulgated after May 1, 2005, and by agreement to both parties hereto. Implementation of new or revised requirements after May 1, 2005, will remain the sole responsibility of EPA until this Agreement is modified.

C. Pursuant to 40 CFR Part 49.122(c)(2), this Delegation Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the QIN. Any substantive modifications or amendments to this agreement will be subject to the procedures described in 40 CFR Part 49 Section 49.122(d)(2), including public notice.

D. The QIN may, at any time, submit to the Regional Administrator a written request for modification or amendment of this Delegation Agreement.

E. If QIN resources become limited and it is unable to comply with this Agreement, the QIN reserves the right to temporarily stay the implementation of this Agreement. In such case, the QIN will notify the EPA in writing of such temporary staying of this Agreement.

F. The QIN may, at any time, terminate this Agreement by providing sixty (60) days written notice to the Regional Administrator.

XII. Appendix

"Federal Air Rules for Reservations, Implementation Framework"


XIII. Signatures

EPA and the QIN recognize that each reserve all rights, powers, and remedies now or hereafter existing in law or in equity, by statute, treaty or otherwise. Nothing in this Agreement is, or shall be construed, to be a waiver of the sovereignty of the QIN or the United States. By entering into this Delegation Agreement, EPA and the QIN reserve, and do not waive, any jurisdictional claims relating to proper application of the CAA or any other matter. This Delegation Agreement is intended solely for the purpose of facilitating intergovernmental cooperation, and creates no rights

in third parties or the right of third parties to judicial review.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date and year below.


THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



Elin Miller, Regional Administrator
U.S. EPA Region 10

Date: OCT 4 2007

QUINAUT INDIAN NATION



Fawn R. Sharp, President
Quinault Indian Nation

Date:

EXHIBIT N

Quinault Indian Nation Position Description

POSITION TITLE: Water Quality Program Section Leader

8201

JOB SUMMARY: The Water Quality Program Section Leader is expected to manage a comprehensive water quality program dealing with both surface and subsurface waters within the Quinault Reservation. This program includes implementation of the necessary actions for compliance with the Clean Water Act, ongoing water quality sampling, participation in water and watershed planning processes, and working with issues related to both point and non-point source pollution. The position shall monitor processes within the Quinault Usual and Accustomed Hunting and Fishing area that may affect water quality and quantity. The position will work with other Departments within the Division of Natural Resources, and with other Divisions of the Quinault Indian Nation on water related issues.

Responsible to perform and oversee the performance of various fields, laboratory and statistical duties related to water resources managed by the Quinault Nation.

Reviews proposed activities that may affect water quality and quantity within the Quinault Reservation and within the Quinault U&A. Provides comments as necessary to protect QIN resources.

Coordinates closely with other project biologists in Environmental Protection Division, as well as within the Fisheries and Forestry Divisions.

ESSENTIAL DUTIES AND RESPONSIBILITIES:

Work expected as part of this position may include:

1. Develop and implement workplan for tribal water quality program.
2. Develops grant proposals to secure funding for the tribal water program.

3. Plans for and oversees the implementation of grant and program obligations, schedules and budgets.
4. Administer and enforce Quinault Indian Nation water quality standards.
5. Issue and monitor applicable permits for discharges within the Quinault Reservation (e.g. Section 401 and NPDES).
6. Develop and operate a non-point pollution monitoring and prevention program.
7. Maintain compliance with Clean Water Act through EPA under Treatment as a State. This includes finalization of water quality standards for surface waters of the Quinault Reservation, water quality monitoring, and the required triennial reviews.
8. Participate in planning processes for water and watersheds.
9. Develop and oversee water monitoring program. This includes completion of basic planning, sample design, and methods for water related monitoring. Complete data management, and data analysis using standard statistical methods. Complete reporting associated with projects and as requested by the Quinault Nation.
10. Monitor water quality and quantity within the Quinault Usual and Accustomed Hunting and Fishing Area.
11. Participate in water related processes within the Quinault U&A (e.g. Chehalis Basin Partnership) as requested by the Department of Environmental Protection Manager.
12. Monitor actions to improve water quality (e.g. ongoing TMDL development).
13. Respond to water quality violations.
14. Coordinate water quality program with existing land management and fisheries programs.
15. Set up and administer flow monitoring program for Reservation waters.
16. Set up and administer ground water monitoring program within the Quinault Reservation.
17. Conduct EPA approved Quality Assurance/Quality Control program for water quality sampling program.
18. Serves as the leader for water related processes for the Department.

19. Complete grant proposals for water related projects.
20. Complete necessary reports as needed by grant funding or requests of the Quinault Indian Nation.
21. Manage short term projects tied to project specific funding.
22. Participates in technical meetings concerning water related issues. This will include the tribal coordinated water quality program.
23. Briefs Natural Resources Director and attends Business Committee meetings when requested regarding the approval of grant work plans and budgets, resolutions, ordinances, negotiations, water quality issues, and special projects.
24. Provides technical review and comments on water related permits (e.g. NPDES, NEPA, SEPA, Shorelines) within the Quinault U&A as needed.
25. Performs other tasks as required

Supervisory Responsibilities

Supervises the tribal water program staff including overseeing daily operations and training. Carries out supervisory responsibilities in accordance with the Quinault Indian Nation personnel policies and procedures, and all applicable laws. Responsibilities include interviewing, hiring, coaching and training employees; planning, assigning, and directing work; appraising performance; rewarding, recognizing and counseling employees; addressing complaints and resolving problems.

MINIMUM QUALIFICATIONS:

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Bachelor of Science Degree in natural sciences (e.g. limnology or aquatic ecology) or closely related field.

Five years of experience, two years at the Biologist 1 level or equivalent. MS Degree in appropriate discipline may be substituted for two years. Ph.D. may be substituted for three years.

Valid Washington State Drivers License required.

Knowledge of quantitative techniques and procedures including study design, statistical methods, and sampling methods.

Understanding of fresh water biology, chemistry, with a basic working knowledge of hydrology.

Ability to express ideas effectively in English, both verbally and in writing. Ability to write reports and grants, prepare power point presentations, and convey technical information effectively to Natural Resources Director, Business Committee, tribal members, agency staff and the public.

Ability to deal tactfully with the public.

Ability to write technical reports.

Ability to work independently.

Ability to understand and accept direction.

Ability to manage large complex data sets.

Ability to interpret water related data.

Comfortable working around swift deep bodies of water and slippery surfaces. Ability to swim.

Ability to lead and supervise.

DESIRED QUALIFICATIONS:

Experience with computer applications including Word, Excel and Access.

Experience with water chemistry and analytical equipment used in the professional laboratory and field sampling.

Quinault Indian Nation Position Description

POSITION TITLE: Water Quality Technician

[num]

JOB SUMMARY: The Water Quality Technician is expected to collect water quality as part of a comprehensive program dealing with both surface and subsurface waters within the Quinault Reservation. These data include those necessary for compliance with the Clean Water Act, ongoing water quality sampling, participation in water and watershed planning processes, and working with issues related to both point and non-point source pollution. The position shall monitor water within the Quinault Usual and Accustomed Hunting and Fishing area that may affect fish production. The position will work with other Departments within the Division of Natural Resources, and with other Divisions of the Quinault Indian Nation on water related issues.

Responsible to perform various field, and laboratory tasks related to water resources managed by the Quinault Nation.

Responsible for producing data in the form needed by the Water Quality Program Section Leader.

Coordinates closely with other employees of the Quinault Division of Natural Resources as needed.

ESSENTIAL DUTIES AND RESPONSIBILITIES:

Work expected as part of this position may include:

1. Collect field data on water quality as directed by the Water Quality Program Section Leader.
2. Follow accepted QA/QC protocols.
3. Check data for errors.
4. Summarize data as defined by Water Quality Program Section Leader. Provide these data to Water Quality Program Section Leader.
5. Collect data as directed for a non-point pollution monitoring and prevention program.

6. Monitor water quality and quantity within the Quinault Usual and Accustomed Hunting and Fishing Area.
7. Participate in water related processes within the Quinault U&A (e.g. Chehalis Basin Partnership) as requested by the Water Quality Program Section Leader.
8. Respond to water quality violations.
9. Assist with flow monitoring program for Reservation waters.
10. Assist with ground water monitoring within the Quinault Reservation.
11. Follow EPA approved Quality Assurance/Quality Control program for water quality sampling program.
12. Complete necessary data summaries and other tasks necessary for reports as needed by grant funding or requests of the Quinault Indian Nation.
13. Participates in technical meetings concerning water related issues as requested by the Water Quality Program Section Leader. This will include the tribal coordinated water quality program.
14. Performs other tasks as required

MINIMUM QUALIFICATIONS:

To perform this job successfully, an individual must be able to perform each essential duty satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

Associate of Science Degree in natural sciences (e.g. limnology or aquatic ecology) or closely related field.

Three years of experience at the Technician 2 level or equivalent. Bachelor of Science Degree or Master of Science Degree in appropriate discipline may be substituted for experience.

Valid Washington State Drivers License required.

Knowledge of sampling techniques

Ability to follow complex sampling procedures.

Ability to express ideas effectively in English, both verbally and in writing.

Ability to deal tactfully with the public.

Ability to work independently.

Ability to understand and accept direction.

Ability to manage data under supervision of Water Quality Program Section Leader.

Comfortable working around swift deep bodies of water and slippery surfaces. Ability to swim.

DESIRED QUALIFICATIONS:

Experience with computer applications including Word, Excel and Access.

Experience with water chemistry and analytical equipment used in the professional laboratory and field sampling.

Basic understanding of fresh water biology, chemistry, and salmonid fish life history.